

USSN: 09/932,523
Atty. Docket No.: 2001B078
Response dated November 21, 2003
Reply to Final OA of October 1, 2003

REMARKS

Claims 23-36 and 38-39 remain in the application. Claims 1-22 and 37 have been cancelled. Claims 23 and 25 are amended herein.

Section 112 Rejections

In the instant Office Action, the Examiner repeats his rejection under 35 USC 112, second paragraph, of the use of the term "core" in the claims. Applicant submits that the use of the term "core layer" is well known to one skilled in the art to which the subject matter of the claims pertains. When used in connection with multi-layer films, the term "core layer" refers to a base film layer that is attached or adjacent to one or more other film layers.

The Examiner rejected claims 25-26 under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention because there is no antecedent basis for the "toughening agent" recited in claim 25. Accordingly, Applicant amends claims 25-26, which depend on claim 23, to recite a "toughening additive" for which an antecedent basis is provided in claim 23.

The Examiner rejected claim 37 under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention because the phrase "said sleeve label is a lap-seal". Accordingly, Applicant cancels claim 37.

Section 102 and 03 Rejections over McCarthy

The Examiner rejected claims 23-26 and 33-35 under 35 USC 102 as being anticipated by McCarthy et al. Also, the Examiner rejected the remaining claims as being obvious over McCarthy in combination with other references. The Examiner takes the position that McCarthy discloses a thermoplastic multi-layer film (film laminated with paper) comprising 60% by weight of a polylactic acid comprising any amount of 1 to 8 mol% of D-lactic acid and 40% of a toughening additive comprising polybutylene succinate/adipate. Accordingly Applicant amends

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claim 23, and those claims depending therefrom (namely claims 24-32) to delete reference to polybutylene succinate/adipate. In view of this amendment, Applicant submits that Examiners rejection of these claims over McCarthy is now moot because the claims, as amended, do not recite polybutylene succinate/adipate as a toughening additive. Accordingly, Applicant requests the Examiner to withdraw his rejection to claims 23-26.

With respect to claims 33-36 and 38-39 (claim 37 is now cancelled) the Examiner takes the position that McCarthy's disclosure of a film laminated with paper (at col. 7, lines 37-55) referenced above, is within the scope of these claims. Applicant disagrees. Rather, McCarthy does not disclose a first skin layer which comprises a second polylactic acid having a second D-lactic acid level of at least 8 mol%. Accordingly, Applicant respectfully requests Examiner to withdraw its rejection of these claims.

* * *

It is respectfully submitted that the above Amendment and Remarks places the case in order for allowance or in better condition for consideration on appeal. Entry of the Amendment and early allowance of the claims, as amended, are therefore respectfully requested.

Respectfully submitted,

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